

## Message Text

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43

ACTION EB-07

INFO OCT-01 ARA-06 ISO-00 CIAE-00 COME-00 DODE-00 DOTE-00

FMC-01 INR-07 NSAE-00 CG-00 OFA-01 DLOS-04 L-03 SS-15

NSC-05 SP-02 H-02 STR-04 TRSE-00 PRS-01 /059 W

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R 231248Z JAN 76

FM AMEMBASSY SANTIAGO

TO SECSTATE WASHDC 6766

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EO 11652: N/A

TAGS: EWWT, CI

SUBJECT: DISCRIMINATORY PRACTICES - DL 1297

REF: A) SANTIAGO 268, PARA 5; B) SANTIAGO 164; C) 74 STATE A-5007

BEGIN UNCLASSIFIED

1. AS PROMISED REF A, THERE FOLLOWS TEXT OF DL 1297 OF  
DECEMBER 23 PROMULGATED IN DIARIO OFICIAL OF JANUARY 2, 1976.

2. BEGIN TITLE. MINISTRY OF FINANCE, YEAR 1975, INTERPRETS  
PARAAGRAPH 3 OF ARTICLE 22 OF LAW NO. 12041, CONCERNING THE  
DEVELOPMENT (FOMENTO) OF THE NATIONAL MERCHANT MARINE. SANTIAGO,  
DECEMBER 23, 1975. THE JUNTA OF THE GOVERNMENT TODAY DECREES  
THE FOLLOWING: NUMBER 1297. HAVING IN MIND THE PURPORT OF  
DECREE LAWS 1 AND 128 OF 1973, AND 527 OF 1974, AND, END TITLE.

3. BEGIN TEXT. OONSIDERING THAT ARTICLE 22, PARAGRAPH 3 OF  
LAW NO. 12041, AMENDED BY DECREE LAW NO. 466 OF 1974, ESTABLISHED  
THAT UP TO 50 PERCENT OF THE RESERVED IMPORT AND EXPORT CARGOES  
COULD BE TRANSPORTED BY VESSELS OF THE COUNTRY OF ORIGIN OR  
DESTINATION, PROVIDED THAT COUNTRY RECOGNIZED THE SAME RIGHT  
FOR CHILEAN VESSELS FOR SIMILAR CARGOES OR, TRANSITORILY, IN  
A LOWER PERCENTAGE, UNDER THE CIRCUMSTANCES AND CONDITIONS

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MENTIONED IN ARTICLE 37 OF THE ABOVE MENTIONED LAW;

4. THAT THE FOREGOING CONSTITUTES THE RECOGNITION OF THE PRINCIPLE OF RECIPROCITY WHICH, AS A GENERAL NORM, MUST BE IMPLEMENTED THROUGH AGREEMENTS ON THE RESERVE AND DISTRIBUTION OF IMPORT AND EXPORT CARGOES, WITHOUT PREJUDICE TO THE OPERATION OF THIS PRINCIPLE APART FROM AGREEMENTS, SINCE RECIPROCITY HAS REPEATEDLY BEEN RECOGNIZED BY OTHER COUNTRIES;

5. THAT POOLING AGREEMENTS PRESENTLY IN FORCE REFER TO IMPORT CARGOES, AND EXPORT CARGOES FROM CHILE DESTINED TO OTHER COUNTRIES ARE NOT INCLUDED;

6. THAT THE STIPULATIONS OF ARTICLE 22, PARAGRAPH 3 OF LAW NO. 12041 TOGETHER WITH THE PRINCIPLES OF RECIPROCITY WHICH HAVE EXISTED OR EXIST WITH VARIOUS COUNTRIES, MUST BE INTERPRETED IN THE SENSE THAT UP TO 50 PERCENT OF THE EXPORT CARGOES MENTIONED IN PARAGRAPH 2 OF ARTICLE 22 OF SAID LAW MAY BE CARRIED BY VESSELS OF THE COUNTRY OF DESTINATION, PROVIDED THE LATTER RECOGNIZES THE SAME RIGHT FOR CHILEAN VESSELS WITH RESPECT TO SIMILAR CARGOES, WHICH MUST BE REGULATED IN FUTURE IN ACCORDANCE WITH EXPLICIT NORMS THROUGH BILATERAL AGREEMENTS BETWEEN GOVERNMENTS OR BETWEEN SHIPPING ENTERPRISES OF BOTH COUNTRIES, DULY AUTHORIZED BY THE CORRESPONDING AUTHORITIES.

7. THAT THE GOVERNMENT JUNTA OF THE REPUBLIC OF CHILE HAS AGREED TO PROMULGATE THE FOLLOWING,

8. DECREE LAW; SOLE ARTICLE: INTERPRETING PARAGRAPH 3 OF ARTICLE 22 OF LAW NO. 12041, AMENDED BY DECREE LAW NO. 466, WITHOUT PREJUDICE TO THE STIPULATIONS OF PARAGRAPH 11 OF THE SAME ARTICLE AND THE AGREEMENTS MENTIONED IN ARTICLE 37 OF THE SAME LAW, UP TO 50 PERCENT OF EXPORT CARGOES MAY BE CARRIED IN VESSELS OF THE COUNTRY OF DESTINATION, PROVIDED THE LATTER COUNTRY RECOGNIZES THE SAME RECIPROCAL RIGHT TO CHILEAN VESSELS FOR SIMILAR CARGOES.

9. THE MINISTRY OF TRANSPORTATION WILL ESTABLISH, THROUGH MINISTERIAL RESOLUTION, IF THE COUNTRY OF DESTINATION OF THE CARGO ACCORDS THE SAME RECIPROCITY TO CHILEAN VESSELS.  
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10. COMMENT: CONCERNING US RECIPROCITY, DEPARTMENT'S ATTENTION IS INVITED TO PARA 4, LAST CLAUSE BEGINNING WITH QTE WITHOUT PREJUDICE UNQTE. OUR READING OF TEXT IS THAT RECIPROCITY MAY BE ESTABLISHED EITHER THROUGH AGREEMENT OR THROUGH EXISTING

PRACTICE APART FROM AGREEMENTS. IN THE LATTER CASE, WHICH IS US CASE, MINTRANSPORT (PARA 9), MUST MAKE A FINDING AS TO EXISTING US PRACTICE.

11. DEPARTMENT WILL PERCEIVE APPARENT CONTRADICTION BETWEEN EXPLICIT RECOGNITION OF EXISTING PRACTICE AS BASIS FOR FINDING OF RECIPROCITY (PARAS 4 AND 6) AND REQUIREMENT (PARA 9) THAT QTE IN FUTURE UNQTE RECIPROCITY BE REGULATED THROUGH BILATERALS BETWEEN GOVERNMENTS OR POOLS APPROVED BY GOVERNMENTS. AS DRAFTED, LAW DOES NOT SPECIFY WHEN QTE IN FUTURE UNQTE WILL BEGIN. NOR IS IT CLEAR WHETHER, AFTER THIS CUT-OFF DATE, EXISTING PRACTICE WOULD CEASE TO BE SUFFICIENT, AND BILATERAL OR OTHER AGREEMENTS WOULD HAVE TO BE ARRIVED AT.

12. PLANNING ORGANIZATION (ODEPLAN) DIRECTOR ROBERTO KELLY ACKNOWLEDGED TO ECON COUNSELOR THAT LAW INDEED CONTAINED SEVERAL INCONSISTENCIES OF THIS KIND. HE ASKED EMB TO BE PATIENT WHILE GOC WORKED PROBLEM OUT. LIKE FONMIN (LACKINGTON) EARLIER, HE EXPLAINED CONCERN FOR AGREEMENTS REGARDING CHILEAN PLAN TO ADHERE TO UN-SPONSORED CODE OF CONDUCT FOR LINER CONFERENCES (REF C), UNDER WHICH FLAG SHIPPING OF COUNTRY OF ORIGIN WOULD TAKE 40 PERCENT OF CARGO, THAT OF COUNTRY OF DESTINATION 40 PERCENT, WITH 20 PERCENT RESERVED FOR THIRD-COUNTRY FLAGS.

13. PERHAPS FULLER EXPLANATION IS THAT APPARENT INCONSISTENCY REPRESENTS COMPROMISE BETWEEN STRONG MINTRANSPORT INTEREST IN ENFORCING POOLING ARRANGEMENTS UPON FOREIGN FLAG SHIPPING, AND HIGH-LEVEL PRESSURES FROM ELSEWHERE IN GOC TO COME UP WITH SOMETHING ACCEPTABLE TO USG. WITHOUT QUESTION, DL-1297 TYPIFIES CONTINUING GOC TENDENCY TO PROMULGATE LEGISLATION WITHOUT SUFFICIENT CONSIDERATION HAVING BEEN GIVEN TO SUCH INTERNAL INCONSISTENCIES, OR, (ON OTHER OCCASIONS) TO POLITICAL LIMITED OFFICIAL USE

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CONSEQUENCES ABROAD.

14. MEANWHILE, PRUDENTIAL AND LYKES AGENT (GRACE Y CIA.) HAS FURNISHED TO EMBASSY LIST BY TYPE OF CARGO, DESTINATION, AND TONNAGE, OF WAIVERS DENIED TO THESE US-FLAG CARRIERS, OCTOBER 1, 1975 THROUGH JANUARY 21, 1976. LIST IS BEING POUCHED TO EB/TT/MA. OF TOTAL OF 716 TONS OF CARGO DENIED TO US-FLAG SHIPPING, 544 WAS DESTINED FOR US PORTS, WHILE 172 TONS WAS WAYPORT, DESTINED FOR CALLAO AND GUAYAQUIL. OF THE 544 TONS DESTINED FOR US, ROUGH EMB ESTIMATE IS THAT 344 TONS REPRESENT EXPORTS FOR WHICH CHILE IS RECEIVING TARIFF EXCEPTIONS UNDER GSP, INCLUDING WINE (10), BEANS (300), SKINS (19), AND FURNITURE (15).

15. MINTRANSPORT HAVING SO FAR FAILED TO MAKE FINDING OF

RECIPROCITY UNDER PARA 9, ABOVE, SUCH WAIVERS ARE STILL BEING  
DEMANDED BY CHILEAN FLAG LINES.  
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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** MARINE TRANSPORTATION, LAW, DISCRIMINATION, CARGO, POLICIES  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 23 JAN 1976  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** morefirh  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
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**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
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**Office:** ACTION EB  
**Original Classification:** LIMITED OFFICIAL USE  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 4  
**Previous Channel Indicators:** n/a  
**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** n/a  
**Reference:** 76 SANTIAGO 268, 76 SANTIAGO 164, 75 STATE A-5007  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** morefirh  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 12 APR 2004  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <12 APR 2004 by GarlanWA>; APPROVED <13 MAY 2004 by morefirh>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
04 MAY 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** DISCRIMINATORY PRACTICES - DL 1297  
**TAGS:** EWWT, CI, US  
**To:** STATE  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006